October 4, 2011

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Written *Ex Parte* Presentation of the American Cable Association ("ACA") and National Cable & Telecommunications Association ("NCTA"); Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109

Dear Ms. Dortch:

To date, NCTA and ACA have opposed the ABC Plan's right of first refusal (ROFR) proposal[1] because it is neither competitively neutral nor fiscally responsible nor does it provide consumers with adequate broadband service. That said, NCTA and ACA understand that the Commission wishes to move forward with a final order as soon as possible and in the interest of compromise sets forth a new proposal contained herein. As compared to the ROFR proposal in the ABC Plan, the NCTA/ACA proposal better promotes the Commission's universal service reform principles because it will produce more immediate broadband deployment in areas where it is most needed and distribute support in a more competitively neutral and fiscally responsible manner while providing for an adequate transition from the current legacy fund.

As consumer groups and facilities-based providers (including NCTA and ACA) have demonstrated, the ROFR provision in the ABC Plan (which would award a ROFR to an

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[1] Letter from Robert W. Quinn, Jr., Senior Vice President-Federal Regulatory & Chief Privacy Officer, AT&T, et al., to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, *et al.*, Attachment 1 (July 29, 2011) ("ABC Plan").

incumbent local exchange carrier (LEC) in any wire center where it provides broadband to at least 35 percent of households) plainly violates the principle of competitive neutrality and unnecessarily increases the size of the high cost program.[2] To the extent the Commission decides to include a ROFR as part of its universal service reform effort notwithstanding these concerns, NCTA and ACA propose three changes that would minimize the negative consequences identified in the record and increase the potential public interest benefits.

First, NCTA and ACA propose that the Commission establish the coverage threshold described below in a manner that ensures that no more than $600 million annually in support is awarded pursuant to a ROFR. Price cap carriers today draw approximately $900 million annually from the High-Cost fund, an amount established when local competition was taking root and broadband service was beginning its dramatic growth. Yet, rather than reflect the growth in competitive broadband alternatives, the ABC Plan through the ROFR would give the price cap carriers a right to twice that amount, roughly 80 percent of $2.2 billion. Only 20 percent of support would be awarded through competitive bidding. The Commission should address this fundamental lack of competitive neutrality in the ABC Plan. The NCTA/ACA proposal to limit the total amount of support awarded through a ROFR takes advantage of the competitive market by providing that most support in price cap areas will be awarded through the more efficient competitive bidding process and not through a ROFR. In addition to addressing the significant competitive implications to the ABC Plan proposal, the more robust use of competitive bidding proposed by NCTA and ACA will help the fund stay within the budget proposed under the ABC Plan.

Second, the Commission should award a ROFR only in areas that fall *below* the 35% coverage threshold proposed in the ABC Plan (or another threshold to be determined by the Commission). One of the most significant flaws in the ABC Plan's ROFR proposal is that it would award support (i.e., the cost of a new wireline network) primarily in areas where the incumbent LEC already has built broadband facilities. By prioritizing areas where broadband networks already have been deployed, the ABC Plan is at odds with the Commission's goal of expanding broadband to areas where it has not yet been deployed.[3] In addition, it is fiscally

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[2] Comments of the National Cable & Telecommunications Association, WC Docket No. 10-90, at 15-16 (filed Aug. 24, 2011); Comments of the American Cable Association, WC Docket No. 10-90, at 11-13 (filed Aug. 24, 2011); Letter from Sarah J. Morris, New America Foundation Open Technology Initiative, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, at 1-2 (filed Sept. 22, 2011); Letter from S. Derek Turner, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, at 2 (filed Sept. 27, 2011); Letter from Rebecca M. Thompson, Rural Cellular Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, at 3 (filed Sept. 27, 2011); Letter from David LaFuria, Lukas, Nace, Gutierrez & Sachs, LLP, Counsel for United States Cellular Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, at 2-3 (filed Sept. 29, 2011).

[3] *Connect America Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, ¶ 5 (2011) ("There are unserved areas in every state of the nation and

irresponsible to quantify the level of support using a cost model that presumes a new wireline network will be deployed in an area that is predominately unserved, and then to allow incumbents to satisfy their obligations with existing wireline facilities or with less expensive wireless networks. If the Commission is going to grant price cap LECs the special privilege of a ROFR to receive support for the cost of a new wireline network, it can and should expect a meaningful commitment from those carriers to build new wireline broadband facilities in unserved areas.

Third, if the Commission establishes a ROFR for price cap carriers, support should be awarded for a shorter period of time than the 10-year period proposed in the ABC Plan. Because the ROFR will provide a significant disincentive for companies other than the incumbent LEC to enter a subsidized area, the ABC Plan proposal would establish a regime that could deny consumers in those areas the benefits of technology developments that occur over the next decade. NCTA and ACA propose that awarding support pursuant to a ROFR for a period of no more than six years would provide the appropriate incentive for immediate investment without precluding competitive and technological progress in the future.

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For the reasons described above, NCTA and ACA remain opposed to the ABC Plan's proposal to award a ROFR to price cap LECs. But if the Commission includes a ROFR process as part of its universal service reform efforts, NCTA and ACA strongly encourage it to incorporate the three changes proposed in this letter.

Respectfully submitted,

s/ Ross J. Lieberman

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its territories, and in many of these areas there is little reason to believe that Congress's desire 'to ensure that all people of the United States have access to broadband capability' will be met any time soon if current policies are not reformed.").